

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
)
v.) No.: 07 CR 851
) 06 GJ 808
)
FRANCISCO MENDEZ-NUNEZ,) Chief Judge James F. Holderman
ALVADOR GARCIA,)
FRANCISCO MENDEZ JR.,)
JAVIER GARCIA,)
FRANCISCO SOTO,)
JUAN DURAN,)
OSCAR ANDRADE,)
VICTOR VELAZQUEZ, and)
DON MCNISH)

GOVERNMENT'S MOTION FOR AN EXTENSION OF TIME
TO RETURN INDICTMENT PURSUANT TO 18 U.S.C. § 3161(h)

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, hereby moves this Court, pursuant to 18 U.S.C. § 3161(h)(8), for a 60-day extension of time, to and including March 19, 2008, in which to seek the return of an indictment against the defendants. In support of the Motion, the government respectfully states as follows:

BACKGROUND

1. On December 19, 2007, the government filed a criminal complaint against the nine above-captioned defendants alleging a conspiracy to possess with intent to distribute and to distribute cocaine in violation of 18 U.S.C. § 846. Each of the defendants was arrested on December 20, 2007 and brought before the Court for initial appearances on either December 20, 2007 or December 21, 2007.

2. Defendants FRANCISCO MENDEZ JR., JAVIER GARCIA, FRANCISCO SOTO, OSCAR ANDRADE, VICTOR VELAZQUEZ, and DON MCNISH were all subsequently released on bond. Defendants FRANCISCO MENDEZ-NUNEZ, SALVADOR GARCIA, and JUAN DURAN each waived their right to a detention hearing without prejudice to later seeking a bond. Bond hearings for FRANCISCO MENDEZ-NUNEZ and JUAN DURAN have since been scheduled for Friday, January 11, 2008. No hearing is scheduled for SALVADOR GARCIA, an undocumented alien.

3. Defendants FRANCISCO MENDEZ-NUNEZ, SALVADOR GARCIA, FRANCISCO MENDEZ JR., JAVIER GARCIA, FRANCISCO SOTO, JUAN DURAN, OSCAR ANDRADE and VICTOR VELAZQUEZ each waived their right to a preliminary examination and a finding of probable cause was entered. Defendant DON MCNISH exercised his right to a preliminary examination, held before the Honorable Sidney I. Schenkier on January 3, 2008, and a finding of probable cause was entered.

4. The Speedy Trial Act requires that an indictment or information be filed within 30 days of the date of a defendant's arrest. 18 U.S.C. § 3161(b). Accordingly, the deadline for the filing of an indictment or information is presently Saturday, January 19, 2007, as to each defendant.

5. The government is in the process of assembling and providing early discovery to defendants. In addition, MCNISH has been afforded the opportunity to cross-examine the co-case agent at the preliminary examination and has also been provided with copies of the four Applications for Authority to Intercept Wire

Communications (including the Affidavits attached thereto) and corresponding Orders entered by this Court in the course of the investigation.

6. The Speedy Trial Act permits the extension of time to return an indictment "upon the request of the attorney for the government if the Court finds that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(8)(A). For the reasons set forth below, an extension is warranted in this case.

7. First, this case is complex. The investigation by the Drug Enforcement Administration ("DEA") that led to the complaint in this case involved approximately 2,152 calls intercepted pursuant to orders of this Court.¹ Most of the calls were in Spanish. The review of the intercepted calls is ongoing.

¹ On August 13, 2007, Chief Judge James F. Holderman entered an Order authorizing the interception of wire communications to and from the cellular telephone bearing the number (773) 390- 6007 ("Target Phone 2") (the "8-13-07 Order"). The wire interception of Target Phone 2 began on August 14, 2007, at approximately 4:41 p.m., and continued until September 11, 2007. On September 11, 2007, Chief Judge Holderman entered an Order authorizing the continued interception of wire communications to and from Target Phone 2 (the "9-11-07 Order"). The continued wire interception of Target Phone 2 pursuant to the 9-11-07 Order began on September 11, 2007 at approximately 4:46 p.m., and continued through October 10, 2007.

On October 9, 2007, Chief Judge James F. Holderman entered an Order authorizing the interception of wire communications to and from cellular telephone (773) 315-0030 ("Target Phone 3") for a period of thirty days (the "10-9-07 Order"). Agents conducted interceptions pursuant to the 10-9-07 Order from October 9, 2007 through November 7, 2007. On November 8, 2007, Chief Judge James F. Holderman entered an Order authorizing the continued interception of wire communications to and from Target Phone 3 for a period of thirty days (the "11-8-07 Order"). Agents conducted interceptions pursuant to the 11-8-07 Order from November 8, 2007 through and including December 7, 2007.

8. Second, due to the holidays, no grand jury sat during the week of December 24, 2007, and the grand jury schedule was reduced during the week of December 31, 2007.

9. Third, additional reasons support the government's requested extension, as set forth in the Attachment submitted to the Court in conjunction with this Motion, which the government respectfully requests be placed under seal so as not to compromise its ongoing investigation and so as not to reveal matters occurring before the Grand Jury.

10. As noted above, the government has provided defense counsel with limited early discovery. Such early discovery permits defense counsel to begin preparations for future proceedings in the district court, and thereby curtails any delay that would otherwise be experienced by the requested extension of time to indict.

11. Counsel for the following defendants have informed the government they have no objection to the government's requested extension: JAVIER GARCIA, JUAN DURAN, OSCAR ANDRADE, VICTOR VELAZQUEZ and DON MCNISH.

12. The government submits that for the reasons set forth above coupled with the additional reasons given in the Attachment, taken together with the fact that defendants will be provided with early discovery, it is in the interests of justice to grant the relief requested herein. The Motion should be granted.²

² A proposed order is attached to this Motion.

WHEREFORE, the United States respectfully requests a 60-day extension of time from January 19, 2008 to and including March 19, 2008 in which to seek an indictment in this case.

Respectfully submitted.

PATRICK J. FITZGERALD
United States Attorney

By: /s/ J. Gregory Deis
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Dated: January 10, 2008

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CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that in accordance with FED. R. CIV. P. 5, LR5.5, and the General Order on Electronic Case Filing (ECF), the following document:

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was served pursuant to the district court's ECF system as to ECF filers, if any, and were sent by first-class mail on January 10, 2008, to the following non-ECF filers:

SEE ATTACHED SERVICE LIST

Respectfully submitted.

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